

SOUTH AFRICA / JUDGMENT

MIC Investment Holdings (Pty) Ltd v Metrofile Holdings Limited (LM058May17) [2017] ZACT 27 (18 July 2017)

[2017] ZACT 27

COURT

Competition Tribunal

BEFORE

Medi Mokuena, Andiswa Ndoni, Fiona Tregenna

CASE / FILE NUMBER

LM058May17

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM058May17

In the matter between:

MIC INVESTMENT HOLDINGS (PTY) LTD Primary Acquiring Firm

and

METROFILE HOLDINGS LIMITED Primary Target Firm

Panel

: Medi Mokuena (Presiding Member)

: Andiswa Ndoni (Tribunal Member)

: Fiona Tregenna (Tribunal Member)

Heard on Order

: 28 June 2017

Issued on Reasons : 28 June 2017

Issued on

: 18 July 2017

Reasons

for Decision

Approval

- [1] On 28 June 2017, the Competition Tribunal ("Tribunal") approved the proposed transaction involving MIC Investment Holdings (Pty) Ltd ("MIC") and Metrofile Holdings Limited ("Metrofile").
- [2] The reasons for approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is MIC Investment Holdings (Pty) Ltd, a private company incorporated in accordance with the laws of South Africa. MIC is a wholly owned subsidiary of the Mineworkers Investment Company (RF) (Pty) Ltd, which is controlled by the Mineworkers Investment Trust ("MIT"). MIT has controlling and noncontrolling interests in a number of firms. MIT and its subsidiaries, including MIC will be referred to as the "MIC Group".
- [4] The MIC Group invests in cash generative assets that enable it to pay a sustainable dividend to MIT to fund social upliftment programs for members of the National Union of Mineworkers and their dependants. The MIC Group has controlling and noncontrolling interests in firms across a wide spectrum of services.

Primary target firm

- [5] The primary target firm is Metrofile Holdings Limited, a public company incorporated in accordance with the laws of the Republic of South Africa. Metrofile is listed on the Johannesburg Securities Exchange ("JSE") and is not controlled by any firm.

Pretransaction, MIC is the largest shareholder in Metrofile. In addition Metrofile owns more than ten different entities within South Africa. Metrofile and its subsidiaries will be collectively referred to as the "Metrofile Group".

- [6] The Metrofile Group is a service provider in both physical and digital information and records management. Their services include

archival, storage, retrieval, and destruction of records; conversion of paper and analogue records to digital formats; rotation management and storage of backup media; professional consultancy and records management software; waste paper collection and recycling; and sale and maintenance of document handling equipment, as well as other business and Information Technology ("IT") continuity services.

Proposed transaction and rationale

- [7] MIC intends to increase its shareholding in Metrofile over the next 12 months through ongoing share purchases on the JSE, resulting in MIC acquiring control of Metrofile.

- [8] MIC has decided to increase its shareholding in Metrofile as a result of it being able to generate favourable returns from its current shareholding. MIC will assist Metrofile in achieving its strategic objectives and maximise its BEE ownership.
- [9] The proposed transaction is an opportunity for Metrofile to enhance its BEE ownership credentials. It further, allows Metrofile to be strengthened by a shareholder with the ability to support it strategically and financially.

Impact on competition

- [10] The Competition Commission ("Commission") submits that the proposed transaction does not result in a horizontal overlap because no firm within the MIC Group (except Metrofile) provides any products and services which Metrofile provides. Further, the MIC Group is increasing its shareholding in Metrofile, therefore there is unlikely to be any change in the structure of the market as there shall be no accretion of market share.
- [11] The Commission, did however note that there was an existing vertical relationship between the merging parties' subsidiaries. Metrofile provides document storage services to MIC Management Services. Despite this, the Commission concluded that the transaction is unlikely to raise any customer and input foreclosure concerns as the MIC Group's records management amounts to a negligible portion of the record management market. The MIC Group only uses Metrofile for its record management.
- [12] With regard to any input foreclosure concerns, the MIC Group's requirements for record management amounts to a negligible portion of the market, consequently Metrofile cannot afford to only service the MIC Group.
- [13] Based on the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market. We concur with the Commission's

conclusion.

Public interest

- [14] The merging parties confirmed that the proposed transaction will have no negative effect on employment in South Africa.[1]
- [15] The proposed transaction furthermore raises no significant other public interest concerns.

Conclusion

- [16] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

18 July 2017

DATE

Ms Medi Mokuena

Ms Andiswa Ndoni and Prof. Fiona Tregenna concurring

Case Manager :

Kameel Pancham

For the merging parties: Hendrik Krog and PJ Hope from PWC Legal

For the commission:

Zanele Hadebe

[1] Merger Record, pages 10 and 11.

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